

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

KPM ANALYTICS NORTH AMERICA
CORPORATION,

Plaintiff,

v.

BLUE SUN SCIENTIFIC, LLC; THE INNOVATIVE
TECHNOLOGIES GROUP & CO., LTD; ARNOLD
EILERT; MICHELLE GAJEWSKI; ROBERT
GAJEWSKI; RACHAEL GLENISTER; GREGORY
ISRAELSON; IRVIN LUCAS; and PHILIP
OSSOWSKI,

Defendants.

Civil Action No. 4:21-cv-10572-LTS

**DEFENDANTS’ MOTION TO DISSOLVE OR MODIFY
THE PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P 60(b)(5), Defendants Blue Sun Scientific, LLC (“Blue Sun”), The Innovative Technologies Group & Co., LTD, Arnold Eilert, Robert Gajewski, Rachael Glenister, and Irvin Lucas move to dissolve or modify the preliminary injunction entered on August 23, 2021 (ECF No. 94), as amended (ECF No. 120) (the “Order”). Specifically, Defendants request that they be allowed to service any near-infrared (“NIR”) analyzer and sell Blue Sun analyzers to any customer that is interested in buying such analyzers.

As set forth in more detail in Defendants’ accompanying memorandum of law (which is being filed under seal as permitted by this Court’s order, ECF No. 146), discovery has made clear that much of the “customer information” that plaintiff KPM Analytics North America Corporation (“KPM”) claimed to be a trade secret was no such thing, and even if some of the information *was* a trade secret when the Order was entered, it has since become obsolete and therefore lost its trade secret protection.

Moreover, the Order is no longer necessary to prevent irreparable harm, as KPM admits that it has no evidence that any of the Individual Defendants *currently* possess *any* KPM trade secrets, therefore there is no threat that KPM's trade secrets will be disclosed to a third-party. Additionally, any customer confusion about the relationship between Blue Sun and KPM (to the extent any actually existed before the Order was entered) has been resolved.

Finally, the balance of hardships now weighs heavily in favor of dissolving the Order, as corroborated by KPM's own internal correspondence opining that if the injunction is not lifted, Blue Sun will go out of business before trial – which appears to be KPM's goal.

For these reasons and those set forth in the accompanying memorandum of law, Defendants respectfully request that the Order be dissolved, or, in the alternative, that Paragraphs 5 and 6 of the Order be dissolved.

ARNOLD EILERT; ROBERT GAJEWSKI;
RACHAEL GLENISTER; and IRVIN LUCAS,

By their attorneys,

/s/ Dawn Mertineit

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*Counsel for Defendants Blue Sun Scientific, LLC
and The Innovative Technologies Group & Co. Ltd.*

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I HEREBY CERTIFY that on August 23, 2022, Defendants' counsel conferred by email with counsel for Plaintiff, who objected to the relief requested in this motion.

/s/ Dawn Mertineit
Dawn Mertineit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 24, 2022, a copy of the foregoing was served via the Court's ECF system upon all counsel of record. Paper copies will be sent to those indicated as non-registered participants.

/s/ Dawn Mertineit
Dawn Mertineit